

Application/Control Number: 10/034,846

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/034,846

Filing Date: December 28, 2001

Appellant(s): DORSCHNER, LINDA M.

Richard L. Bridge
For Appellant

EXAMINER'S ANSWER

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This is in response to the appeal brief filed 5-21-09 appealing from the Office action mailed 2-12-09.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Appeal 2007-2409, Application 10/034,846, decided 9-6-07.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct except as discussed in Section 9), Ground A.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(8) Evidence Relied Upon

5,904,673	ROE et al	055-1999
4,834,735	ALEMANY et al	05-1989
00/38913	KIMBERLY CLARK	07-2000
	WORLDWIDE INC. (PCT)	
0650714	THE PROTER & GAMBLE	05-1995
	CO. (EPO)	

BPAI decision decided September 6, 2007.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Ground A:

Claims 83-93, 100-102 and 106-111 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The claims are treated as a Group by Appellant (Note 37 CFR 41.37(c)(1)(vii), i.e. any claim argued separately should be placed under a subheading identifying the claim by number.

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Claims argued as a group should be placed under a subheading identifying the claims by number). Claim 107 is considered to be representative of such group of claims.

Claims 107, 109 and 111, and thereby the claims that depend therefrom, now further require the absorbent article include a front portion, a back portion, and a middle portion interconnecting the front and back portions, and the absorbent core be disposed at least in the front portion and the middle portion of the article, the surface area of the absorbent core being greater in the front portion of the article than in the back portion and middle portion, and the surface area of the absorbent core being greater in middle portion of the article than in the back portion in combination with the other previously claimed structure. A cursory review of the application did not reveal the support for such combination. If Applicant maintains such claim language the specific portion of the original specification which provides support for the entire scope of the combination of each claim in a single embodiment must be set forth. See also response to arguments *infra* (i.e. "Applicant's remarks have been carefully considered but are deemed not persuasive in light of the scope of disclosure of the application as originally filed, the claim language and/or the teachings of the prior art discussed *supra*. Specifically, Applicant's arguments on pages 2-3 with regard to the 112 rejection have been considered but are deemed not persuasive. First Applicant relies upon Figures 1-3 for support. However, Figure 1 is directed to the prior art invention, not the instant invention. Figure 2 is an exploded view which is not clear how the portion of core 3 relate to the various portions of the article. Figure 3 is also not clear with regard to the portion of the core in the middle portion 63 of the article as compared to the portion of the core in the front portion 61 as one is wider than the other but the other is longer than the one. Also it is not disclosed the drawings are drawn to scale. Finally, the

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paragraphs referred to, e.g. 57 and 123, are not clear since the paragraphs of the specification are not numbered. Note again 714.02, second to last paragraph.”)

Ground B:

Claim Language Interpretation

Various claim terms have been defined on page 4, line 9-page 8, line 10. All other terminology will be given its common meaning, e.g. dictionary definition. For example, “adjacent” as defined by the dictionary means “close to, lying near”, i.e. is considered relative terminology. See especially page 6, lines 22-25 and 16-18, e.g. “bonded” includes both direct and indirect bonding, and page 5, last 5 lines, i.e. at a minimum “stretchable” means extendable, e.g. a gathered material is extendable, i.e. stretchable, to its ungathered length. With regard to claim 83, claim 107, lines 11-13, claim 108, claim 109, lines 9-11, and claim 110, it is noted that “being stretchable along substantially the entire...of the” “cover” or “liner” does not require that the cover or liner must be stretchable in that direction along the entire dimension, e.g. “being stretchable along the entire length of the cover” is interpreted to mean that the cover is “stretchable” in at least one or some direction at each point along a length which length runs the entirety of the cover, e.g. if the outer cover is gathered in some direction at each point along a length which length runs the entirety of the cover such would be considered to meet the claim language. Similar language with respect to the liner or width will be interpreted similarly. Note also the 9-6-07 BPAI decision at the paragraph bridging pages 8-9 thereof (i.e. “According to the Specification, “the term ‘stretch,’ or ‘stretchable’ refers to a material that is either elastic or extensible. That is the material is capable of being extended, deformed, or the like, without

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breaking, and may or may not significantly retract after removal of an extending force."

(Specification 5.) The term "extensible" refers to a "property of a material where upon removal of an extending force, it provides substantially permanent deformation and/or does not exhibit a significant retractive force." (Id.)"). With regard to the claims and the discussion in the preceding paragraph, see MPEP 2163.06, I.

Claims 83-93, 100-102 and 106-111 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al '673, and thereby, by incorporation, Alemany '735, in view of Morman '913 and Divo '714

Claims 83-93, 100-102 and 106-108, claims 109-110 and claim 111 are treated separately by Appellant (Note 37 CFR 41.37(c)(1)(vii), i.e. any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number). Claims 107 and 109, respectively, is considered to be representative of its group.

Claims 107, 109 and 111:

See Claim Language Interpretation section supra and '673 at Figures 1 and 3-4, the abstract, col. 1, lines 16-46, col. 4, lines 43-50, col. 6, lines 20-26 and 29-35, col. 22, Table 1, Sample X, col. 22, lines 56 et seq, col. 23, lines 5-17, col. 25, lines 19-45, col. 9, lines 16-28 and 47-55, col. 10, line 6-11, col. 21, lines 20-29, i.e. surface area of core 28 is less than or equal to "about" 50% of the surface area of the article, liner is 24, cover is 26. It is noted that the terminology "about" allows some leeway from the dimension it describes. With regard to the

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front edge being closer to the front end than the back edge is to the back end, see col. 4, lines 43-50 and Figures 1 and 3-4. The surface area of the portion of the core which extends into the front half of the article has a surface area which is less than about 30% of the surface area of the front half of the article, see again col. 23, lines 5-9. It is noted the article includes both the chassis 22 and the belt 32. With regard to the “bond” language, see col. 8, lines 57-59 and col. 9, lines 31-34 as well as the Claim Language Interpretation section supra.

With regard to the stretchability of the liner and cover along substantially the entire length and/or width thereof, or “adjacent” front and back edges of the core, see the Claim Language Interpretation section supra as well as the 9-6-07 BPAI decision at page 8, lines 18-20 and page 10, lines 15-16, i.e. ‘673 teaches a back sheet or outer cover of flexible material which conforms to the body which can comprise various materials but does not explicitly teach such are extensible or elastic. This also applies to the similarly described liner/topsheet of ‘673. However see the portions of ‘673 cited supra as well as page 10, lines 8-14 of the decision (i.e. ‘673 teaches the desire for a good/snug fit and clothlike aesthetics as well as economic and manufacturing efficiency, the materials of the backsheet/outer cover and topsheet/liner, the preference to make the nonextensible materials of such extensible where extensibility of the article is desired, etc). Furthermore, see page 11 of the 9-6-07 BPAI decision (i.e. “While we do not find that Roe discloses an outer cover which is stretchable in at least one direction, we recommend that the Examiner consider whether it would have been obvious to include a stretchable outer cover in a disposable absorbent article such as a diaper in view of the disclosures of Morman and Divo (of record). Morman discloses that it is known to use extensible and retractable necked laminate materials in diapers and training pants. (Morman 1 .) Divo

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discloses a topsheet or backsheet of a diaper including a composite elastic member. (Divo, cols. 6 and 8.) Upon return of the Application to the Examiner it is recommended that the Examiner consider whether a rejection of the claims for obviousness over Roe in view of Morman and/or Divo is warranted.”) as well as Divo et al at, e.g., col. 1, lines 3-12, col. 2, lines 50-53, col. 3, lines 5-8 and 29-55, col. 4, lines 35-56, col. 5, lines 36-56, col. 6, lines 31-39, i.e.

backsheet/outer cover and/or topsheet/liner may consist of rather than just merely comprise the disclosed composite elastic member, col. 8, lines 6-33, the sentence bridging cols. 8-9, col. 9, lines 28-31, and 46-48, col. 10, lines 1-19, i.e. SIS adhesive applied by a melt blown process is used to attach nonelastic nonwoven layer to elastic layer, col. 14, lines 28-41 and col. 15, lines 16-41 (note the similarity of materials of the backsheet/outer cover, topsheet/liner and composite with those of the backsheet/outer cover and topsheet/liner of ‘673) and claims, and Morman ‘913 at the abstract (Note “is extensible and retractable in at least one dimension”), page 1, lines 15-19, page 5, lines 1-26, the paragraph bridging pages 8-9, page 13, line 19-page 16, line 4, page 18, lines 3-15 and page 19, lines 8-14, and claims (i.e. known to use extensible retractable necked laminate materials, which materials are similar to those of the backsheet/outer cover and topsheet/liner of ‘673, in diapers to improve fit and clothlike appearance). Therefore to make the backsheet/outer cover and/or topsheet/liner of ‘673 an extensible/elastic backsheet/outer cover and/or topsheet/liner, i.e. a composite elastic member as taught by Divo ‘714 or a necked laminate as taught by Morman ‘913, i.e. as claimed, if not already, would be obvious to one of ordinary skill in the art in view of the recognition that such would provide a better conforming, i.e. snugger, and aesthetically pleasing fit and clothlike appearance while being efficient, both economically and with respect to manufacturing, and the desire of such by ‘673 and/or the

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recognition that the use of such materials to make such article components, i.e. backsheet/outer cover and/or topsheet/line consisting of such, is well known. In so doing the prior art combination necessarily and inevitably teaches the stretchability as claimed in combination with the other claimed features.

Claims 107, 109 and 111, and thereby the claims that depend therefrom, now further require 1) the absorbent article include a front portion, a back portion, and a middle portion interconnecting the front and back portions, 2) the absorbent core be disposed at least in the front portion and the middle portion of the article, 3) the surface area of the absorbent core being greater in the front portion of the article than in the back portion and middle portion, and 4) the surface area of the absorbent core being greater in middle portion of the article than in the back portion. It is noted that the portions of the article relative to the overall article, e.g. the percentage thereof, has not been claimed. With regard to 1) and 2), see, e.g., the Figures of '673 and the discussion supra. With regard to 3) and 4), see col. 8, lines 9-55 of '673 and thereby, by incorporation, '735 at, e.g., Figure 5, col. 7, lines 25-28, and col. 18, lines 42-61, i.e. due to the varying thickness the front portion of 550, e.g. a front 1/3 of the core, has a surface area greater than a rear portion of 550, e.g. a middle 1/3 of the core, e.g. includes the terraced section, and rear portion 548, i.e. a rear 1/3 portion of the core, and such rear portion of 550, i.e. the middle portion, has a surface area greater than that of the rear portion 548. Thus there is sufficient factual basis for one to conclude that such claimed structure 1)-4) would also be necessarily and inevitably/obviously present in the structure of the prior art. See also response to arguments section infra (i.e. "...there is no definition, explicit or otherwise, which limits the surface area only to the major faces and not the thickness as argued ("surface area' referenced in the claims of

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the present application are a function solely of the length and width of the absorbent core, the thickness playing no part of the surface area”), i.e. “essentially” is not entirely or completely, see definition provided with this action. Nor does the claim language itself limit the surface area claimed therein only to that of the major surfaces. Finally, absent such claim language/definition the prior art teaches the surface areas as claimed”).

Although Appellant does not group the other dependent claims separately, the rejection of such claims follows:

Claims 83-93, 100-102, 106, 108, 110: See discussion of claims 107, 109 and 111 supra.

Claims 84-89: Note the terminology “is capable....cover” recite capability of the claimed structure. See also the instant specification at page 17, last two paragraphs and page 19, first full paragraph (note “09/455513” and priority documents on the first page of ‘913) as well as the cited portions of prior art supra, e.g., the same materials, col. 8, lines 6-33, the sentence bridging cols. 8-9, col. 9, lines 28-31, 46-48 of ‘714 (note 30 gmf per inch is about .12 N/cm) and the discussion of claims supra (i.e. the prior art teaches the claimed structure). Thus there is sufficient factual basis for one to conclude that such capabilities of such claimed structure would also be necessarily and inevitably/obviously present in the same structure of the prior art.

Claim 93: Applicant claims an outer cover comprising spunbond polypropylene laminated with an SIS adhesive (Applicant’s attention is also invited to definition of “nonwoven” in Materials Handbook, i.e. includes spunbond polyolefins, i.e. polypropylene) and the cited

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portions of the prior art supra, e.g. Divo et al at col. 10, lines 8-15, i.e. SIS adhesive applied by a melt blown process is used to attach nonelastic “nonwoven” of polypropylene.

Claim 90: See Morman '913 at the abstract, page 18, lines 3-15 and page 19, lines 12-14, i.e. necked laminate of claimed materials.

(10) Response to Argument

Ground A:

The claims are treated as a Group by Appellant (Note 37 CFR 41.37(c)(1)(vii), i.e. any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number). Claim 107 is considered to be representative of such group of claims.

Appellant's remarks on pages 7-9, i.e. Figure 3 and page 27, lines 8-10 and 15-17 teach the claimed invention, have been considered but are deemed not persuasive in light of the scope of disclosure of the application as originally filed and/or the claim language. First the claim language sets forth “...the surface area of the absorbent core being greater in said front portion of the article than in said back portion and said middle portion, the surface area of the absorbent core being greater in said middle portion of the article than in said back portion.... On pages 8-9 of the Brief it is argued that the surface area of each portion is defined by planar extent, i.e. length and width, **independent of thickness** and thereby Figure 3 and page 27 show/describe a surface area as set forth in the claims. However, page 27, lines 15-17 sets forth “Both the second absorbent core length 83 and a function of the second absorbent core width 87 and the intermediate absorbent core width 89 essentially define the **surface area** of the *back one-half*

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portion 105 of the absorbent core 3.” (Emphasis added) (i.e. “essentially” is not entirely or completely, see definition provided with FINAL), i.e. “surface area” is not a function solely of the length and width of the absorbent core, the thickness playing no part of the surface area.) Therefore page 27 does not set forth the relationship of the surface areas of the portions as claimed by the claims. Nor does page 27 limit/define the surface area of the various portions claimed therein only to that of the major surfaces, i.e. not the side faces/faces of the side edges. The claim language itself also does not limit the surface area of the various portions claimed therein only to that of the major surfaces. Finally Figure 3 does not set forth the relationship of the surface areas of the portions as claimed by the claims. For example, Figure 3 is not clear with regard to surface area of the portion of the core in the middle portion 63 of the article as compared to that of the portion of the core in the front portion 61 as one is wider than the other but the other is longer than the one. The side faces/side edges/thicknesses of the portions are also not shown. Additionally it is not disclosed the drawings are drawn to scale. In other words, the “surface area” of the various portions as claimed in the claims is not supported by the argued portions of the original specification.

Therefore, the rejection of claims 83-93, 100-102 and 106-111 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is deemed proper and maintained.

Ground B:

Claims 83-93, 100-102 and 106-108, claims 109-110 and claim 111 are treated separately by Appellant (Note 37 CFR 41.37(c)(1)(vii), i.e. any claim argued separately should be placed

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under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number). Claims 107, 109 and 111, respectively, is considered to be representative of its group.

Claim 107:

Appellant's arguments on pages 10-14, i.e. the prior art does not teach the absorbent core having the claimed "surfaces areas" interpreting "surface area" as argued by Appellant, i.e. "...the term 'surface area' as used in the application clearly refers to the major (i.e. inner and outer faces) of the core *and is in no way a function of the absorbent core thickness...*", page 13 first full paragraph of the Brief, (emphasis added) or "...appellant makes it sufficiently clear that the 'surface area' referenced in the claims of the present application are *a function solely of the length and width of the absorbent core* (i.e., planar extent of the absorbent core) and that *the thickness plays no part* in determining the surface area of the absorbent core.", sentence bridging pages 13-14 of the Brief, (emphasis added), have been considered but also are not deemed persuasive. The arguments are narrower than the disclosure and/or the claim language and/or the teachings of the art. Attention is again invited to the discussion in Section (10), Ground A, supra. Specifically, there is no definition, explicit or otherwise, which limits the surface area only to the major faces and not the thickness, i.e. side faces as argued, i.e. "essentially" as set forth on page 27 does not mean not entirely or completely, e.g. solely or includes no other parts, see definition provided with the FINAL. Nor does the claim language itself limit the surface area claimed therein only to that of the major surfaces. Finally, absent such claim language/definition the prior art teaches the surface areas as claimed, see Section (9), Ground B supra and thereby the Claim Language Interpretations section supra, "All other

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terminology will be given its common meaning, i.e. dictionary definition” i.e. “surface area” includes the area of all surfaces, i.e. the side faces/thickness also.

Claim 109:

Appellant’s arguments on pages 15-16, i.e. the same as advanced with regard to claim 107, have been considered but are also deemed not persuasive for the reasons set forth with regard to claim 107 supra.

Claim 111:

Appellant’s arguments on pages 16-17, i.e. the same as advanced with regard to claim 107, have been considered but are also deemed not persuasive for the reasons set forth with regard to claim 107 supra.

Therefore the rejection of claims 83-93, 100-102 and 106-111 under 35 U.S.C. 103(a) as being unpatentable over Roe et al ‘673, and thereby, by incorporation, Alemany ‘735, in view of Morman ‘913 and Divo ‘714 is deemed proper and maintained.

(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner’s answer are provided herein.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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